

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KEMPER HOLDINGS, LLC, a limited liability
company,

Plaintiff,

v.

AMERICAN INTERNATIONAL GROUP UK
LIMITED T/A LEX-LONDON, a corporation;
AMERICAN GUARANTEE AND
LIABILITY INSURANCE COMPANY, a
corporation; XL INSURANCE AMERICA,
INC., a corporation; LIBERTY MUTUAL
FIRE INSURANCE COMPANY, a
corporation; and CONTINENTAL
CASUALTY COMPANY, a corporation,

Defendants.

No. 2:20-cv-01793

DEFENDANT AMERICAN
GUARANTEE AND LIABILITY
INSURANCE COMPANY'S NOTICE OF
REMOVAL

DEMAND FOR JURY

King County Superior Court
Case No. 20-2-15992-1-SEA

Defendant American Guarantee and Liability Insurance Company ("American
Guarantee") hereby removes the state court action entitled *Kemper Holdings, LLC v.*
American International Group UK Limited, et al., Case No. 20-2-15992-1- SEA on the docket
of the King County Superior Court under 28 U.S.C. §§ 1332, 1441, and 1446. In support of
this Notice of Removal, Defendant states as follows:

I. STATE COURT ACTION

1. The state court action to be removed is *Kemper Holdings, LLC v. American*
International Group UK Limited, et al., King County Superior Court Case No. 20-2-15992-1-

DEFENDANT AMERICAN GUARANTEE & LIABILITY
INSURANCE COMPANY'S NOTICE OF REMOVAL - 1
Case No. 2:20-cv-01793

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SEA. Plaintiff alleges that Zurich and other defendants owe obligations for coverage under certain insurance policies in light of Plaintiff's claimed losses as a result of the "COVID 19 pandemic." (COVID-19 is the disease caused by the virus, SARS-Cov-2.) Plaintiff seeks a declaratory judgment and damages for alleged breach of contract, and asserts causes of action for common law bad faith and for alleged violations of Washington's Consumer Protection Act and Insurance Fair Conduct Act. See Amended Complaint, Exhibit A.

II. TIME FOR REMOVAL

2. Plaintiff filed this action in King County Superior Court on October 30, 2020. The Washington Insurance Commissioner was originally served on November 9, 2020 and Defendant was served on November 13, 2020. This Notice of Removal is therefore timely pursuant to 28 U.S.C. § 1446(b).

III. BASIS FOR REMOVAL

3. A party may seek removal of a state court action where the amount in controversy exceeds \$75,000 exclusive of interest and costs, and the action is between citizens of different states and/or citizens of a state and citizens or subjects of a foreign state. 28 U.S.C. § 1332(a)(1) – (a)(2).

A. Timeliness

4. This Removal is timely because Defendant has filed this Removal pursuant and in accord with 28 U.S.C. § 1446(b). Defendant received a copy of the original Complaint less than 30 days before filing this Notice of Removal.

B. Amount in Controversy

5. A defendant can establish the amount in controversy by the allegations in a complaint, or by setting forth facts in the notice of removal that demonstrate the amount in controversy exceeds \$75,000. *Kroske v. US Bank Corp.*, 432 F.3d 976, 980 (9th Cir. 2005).

6. It is facially apparent from the nature of Plaintiff's claims alleged in the Amended Complaint that the amount in controversy exceeds \$75,000, exclusive of interest and costs. The Amended Complaint alleges that Plaintiff furnished the Defendant-insurers

1 with a third party assessment that shows that Plaintiff's alleged losses are more than \$30
2 million. Amended Compl., ¶ 3. The Amended Complaint also alleges that Zurich's several
3 share of Plaintiff's alleged losses is 25%, or more than \$7.5 million, and that the insurer with
4 the smallest several share has a 10% share, or more than \$3 million. Amended Compl. ¶ 17.

5 7. Pursuant to Local Rule W.D. Wash. 101(a), counsel for Defendant has a good
6 faith belief that Plaintiff seeks damages in excess of the jurisdictional amount in this Court.

7 8. Based on the above, Defendant has established that Plaintiff's alleged damages
8 more likely than not exceed \$75,000.

9 **C. Diversity of Citizenship**

10 9. The diversity of citizenship requirements of 28 U.S.C. § 1332 are satisfied in
11 this case.

12 10. Plaintiff Kemper Holdings, LLC. ("Kemper") is a Washington limited liability
13 company and has its principal place of business in Washington. Amended Compl., ¶ 4.

14 11. Limited Liability Corporations are citizens of all states where its members are
15 citizens. *Johnson v. Columbia Props. Anchorage, LP*, 437 F.3d 894, 899 (9th Cir. 2006). A
16 corporation is a citizen of its state of incorporation and the state where its principal place of
17 business is located. *3123 SMB LLC v. Horn*, 880 F.3d 461, 462-463 (9th Cir. 2018).

18 12. Here, Kemper Holdings LLC has a single member: Kemper Development Co.
19 Kemper Development Co. is a Washington for-profit corporation with its principal place of
20 business in Washington. Kemper Development Co. is thus a Washington citizen, making
21 Kemper Holdings LLC a Washington citizen for purposes of diversity.

22 13. Defendant American International Group, UK Ltd. T/A Lex- London ("AIG")
23 is a corporation registered under the laws of England and has its principal place of business in
24 London, England. Compl., ¶ 5.

25 14. Defendant XL Insurance America, Inc. ("XL") is a corporation organized
26 under the laws of Delaware and has its principal place of business in Connecticut.

1 15. Defendant Liberty Mutual Fire Insurance Company ("Liberty") is a company
2 organized under the laws of Wisconsin and has its principal place of business in Boston,
3 Massachusetts.

4 16. Defendant Continental Casualty Company ("CNA") is organized under the
5 laws of Illinois with its principal place of business in Illinois.

6 17. Defendant American Guarantee and Liability Insurance Company (referred to
7 in the Amended Complaint as "Zurich") is a New York corporation with its principal place of
8 business in Illinois.

9 18. In light of the above, there is complete diversity among the parties, and
10 removal is proper under 28 U.S.C. § 1332(a)(1) and (a)(2).

11 **D. Consent**

12 19. All properly named and served defendants consent to this removal.

13 **E. Venue**

14 20. King County is embraced within the United States District Court for the
15 Western District of Washington, Seattle Division, and the state court action being removed is
16 pending in King County. Thus, this Court is the proper venue for this action pursuant to 28
17 U.S.C. § 1441(a).

18 **IV. REQUIRED DOCUMENTS**

19 21. Defendant will promptly file a copy of this Notice with the Clerk of the King
20 County Superior Court and will give written notice to all adverse parties. 18 U.S.C. § 1446(d).

21 22. Pursuant to Local Rule W.D. Wash. 101(b), Defendant will also provide copies
22 of all other documents from the State Court proceeding.

23 23. By removing this action to this Court, Defendant does not waive any defenses,
24 objections, or motions available to them under state or federal law. Defendant expressly
25 reserves the right to move for dismissal of Plaintiff's claims under Rule 12 of the Federal
26 Rules of Civil Procedure.

1 WHEREFORE, Defendant American Guarantee and Liability Insurance Company
2 requests that this action be removed to the United States District Court for the Western
3 District of Washington pursuant to 28 U.S.C. §§ 1332, 1441, 1446 and hereby request that
4 this Court retain jurisdiction for all further proceedings herein.

5
6 DATED: December 8, 2020

7 LANE POWELL PC

8
9 By s/ *Stephania Denton*
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16 Attorneys for Defendant American Guarantee
17 and Liability Insurance Company
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CERTIFICATE OF SERVICE

I hereby certify that on December 8, 2020, the foregoing was electronically filed with the Clerk of the Court using the CM/ECF System, which in turn automatically generated a Notice of Electronic Filing (NEF) to all parties in the case who are registered users of the CM/ECF system. The NEF for the foregoing specifically identifies recipients of electronic notice. I hereby certify that the following document was sent to the following CM/ECF participant:

Attorneys for Plaintiff:

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and I hereby certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participants:

Executed on the 8th day of December, 2020, at Seattle, Washington.

s/ Lou Rosenkranz

Lou Rosenkranz, Legal Assistant